(Special Criminal Jurisdiction)

Whitley, J.

March 1, 1933.

REX vs: GOVINDASAMY

(Singapore Special Case No. 1 of 1932)

Criminal Law—married woman—enticement—proof of marriage—Penal Code, S. 498; *Ordinance No.* 53 (*Evidence*) *Ss.* 50 & 74.

Before a person can be convicted of enticing away a married woman under S. 498 of the Penal Code marriage must be strictly proved.

The testimony of witnesses who attended the wedding and deposed to having seen the usual marriage rites performed is insufficient.

The production of a marriage certificate and a Temple Marriage register, none of which is issued or kept under the provisions of any law, will not avail. They are not public documents within the meaning of Section 74 of Ordinance No. 53 (Evidence) and none of the presumptions in favour of public documents arise.

Evidence of cohabitation and repute will not suffice to support a charge under S. 498 of the Penal Code.

R v. Ratnam, (1930) *S.S.L.R.* 218 followed.

SPECIAL CASE stated by the Third Police Magistrate under Section 310 (1) of the Criminal Procedure Code on a point of law for the consideration of the Supreme Court. The case was argued before Whitley, J. on the 30th day of January, 1933.

The facts and arguments are sufficiently related in the judgment.

Mc Elwaine, K. C. (Deputy Public Prosecutor) for the Crown.

Mallal, for the accused.

Cur. ad. Vult.

Whitley, J.:—This was a case reserved by the Singapore Police Magistrate under Section 310 (1) of the Criminal Procedure Code which provides that any Police Court may reserve for the consideration of the Supreme Court any question of Law arising in the proceedings before it.

The accused was charged with enticing away a married woman an offence punishable under section 498 of the Penal Code.

The case stated by the Magistrate proceeded as follows:—

"At the hearing of the said charge it was "proved before me that the abovenamed defendant "enticed away the woman Perianayagan from the "guardianship of her husband the abovenamed "complainant and lived with her in Seletar and "elsewhere.

"The evidence of the marriage of the com- "plainant and Perianayagan consisted (1) of "eyewitnesses to the marriage ceremony who "testified that "the temple" attended the wedding "which took place in Singapore on 6-4-19 that all "the usual Hindu Marriage rites were carried "through by the priest of the Mariaman Temple "(but no details of these rites and no expert "evidence was called), (2) of the fact that com- "plainant and Perianayagan were of the same com- "munity or sect and had lived together as man and "wife since the wedding and had one child and "(3)of the registration of the marriage after the "ceremony in the Mariaman Temple, South Bridge "Road, Singapore and the production of both the "certificate given to the couple and the duplicate "counterfoil in the Temple Register.

"It was thereupon contended on the part of "the defendant that marriage was not strictly "proved on these facts there being no evidence that "the marriage was a valid one. Counsel for the "defendant (Mr. N. A. Mallal) relied on *Rex "v. Ratnam* (S.S.L.R. (1930) 218) which insists "on very much stricter proof of marriage than was "accepted in *Rex v. Topandas* (9 S.S.L.R. 137).

"But I am of the opinion that "the temple", "having viewed the ceremonies performed, regis- "tered the marriage in the marriage register of the "Mariaman Temple, thereby put the seal of "validity on the marriage held the marriage to be "strictly proved and, on the defendant offering no "evidence, convicted him of the offence charged.

"The question for the opinion of this Court "is whether the said determination was correct in "point of law and what should be done on the "premises."

Mr. Mallal for the accused contended that as there is no Ordinance regulating Hindu marriages evidence should have been adduced to prove:

(i) what ceremonies were performed and

(ii) that the ceremonies performed were sufficient to constitute a valid marriage.

This being a criminal case the marriage must be strictly proved and recourse cannot be had to the presumptions in favour of marriage which the Court can rely upon in civil cases such as those in which the legitimacy of children is in issue. The distinction between the degree of proof of marriage required in a civil case and that required in a criminal prosecution is exemplified by section 50 (2) of the Evidence Ordinance which provides that the opinion expressed by conduct of any person who has special means of knowledge as to the existence of any relationship of one person to another shall not be sufficient to prove a marriage in prosecutions under section 498 although such opinion is a relevant fact which might constitute sufficient evidence in a civil matter.

On a criminal charge the actual celebration of a marriage ceremony must be proved unless the marriage can be established by a certificate of registration and if the ceremony is to be proved at least one witness must be recalled who can describe it so as to enable the court to determine whether it constituted a legal marriage. (see Archbold's Criminal Pleadings and Evidence 28th Edition p. 1327).

In this case it is sought to prove the marriage (i) by proof of a ceremony of marriage and (ii) by

the production of a marriage certificate and (iii) by evidence of cohabitation and repute.

As to the ceremony eyewitnesses testified that all "the usual Hindoo Marriage rites were carried through "by the priest of the Temple" but this Court has no judicial knowledge of what constitutes a valid Hindoo marriage: no details of the rites performed were given and no priest was called to prove what rites are essential to constitute a valid Hindu marriage. The evidence on this point was considerably weaker than that adduced for the prosecution in the case of *R. v. Ratnam* (1930) S.S.L.R. 218. In that case a Brahmin priest gave evidence as to the ceremonies required and the witness related some details of the ceremonies actually performed but Murison C. J. in his judgment observed that the priest's evidence did not make it clear whether all the ceremonies he described were essential or some merely customary and further that the witnesses of the ceremony did not testify by any means to all the rites mentioned by the Brahmin priest. He concluded with the words "This evidence must leave the Court in doubt "as to whether the ceremonies which were performed "included the essentials of a valid marriage".

The case decided by a Court of three judges on the same section of the Penal Code indicates the strict nature of the proof required in cases of this description and the evidence as to the ceremony in the present case clearly falls short of what is there laid down as necessary.

The English cases establish clearly that on an indictment for bigamy it is necessary to prove the legal validity of a foreign marriage by expert evidence (See *R. v. Povey*, 6. Cox C.C. 83, *R. v. Lindsay*, 18 T.L.R. 761 (1902) and *R. v. Nagnib*, 12 C.A.R. 187). The same principle should I think apply in this Colony when proving a Hindu Marriage.

As regards the marriage certificate and the temple marriage register they would be invaluable corroborative evidence if the validity of the ceremony had been properly proved but the difficulty in which the prosecution find themselves is that the certificate is not issued nor is the register kept in pursuance of the provisions of any law. They are not public documents under section 74 of the Evidence Ordinance and consequently none of the presumptions in favour of public documents arise.

In England a certified copy of the marriage register obtained from the general register office or from the custodian of the particular register is sufficient to prove a marriage since the establishment of a complete system of registration of marriages but only by reason of the fact that such a system has been established by law. A similar system has been established in Ceylon by the Ceylon Marriage Ordinance but there is no such system of registering Hindu marriages in this Colony. It is most proper and desirable that Registers should be kept as this Mariaman Temple has kept the register produced in this case and I do not entertain the least doubt that it is an accurate and complete record of the marriages celebrated there and that all the marriages recorded were properly performed but as it is not a public document I am unable to hold that by itself it supplies the very strict evidence required to prove a criminal charge such as this.

As regards evidence of cohabitation and repute it is clear that this will not suffice *Morris v. Miller* 4 *Burr.* 2057. As the case raises legal points of considerable nicety the Magistrate very properly reserved the points for decision of the Supreme Court under this section.

I hold accordingly that the prosecution did not produce the evidence required by law and under section 311 (1) of the Criminal Procedure Code I reverse the determination of the Magistrate and quash the conviction.

Conviction quashed.

F.M.S.

(Appellate Civil Jurisdiction)

Thorne, Ag. C. J. Prichard and Gerahty JJ.

Dec.1, 1932

K. ISMAIL GANEY ROWTHER and Company
First Defendant—Appellant

vs.

M. A. ABDUL KADER - Plaintiff—Respondent

THE OFFICIAL ASSIGNEE of the property of K. P. PEER MOHAMED, a Bankrupt.
Second Defendant—Respondent

(Negri Sembilan Civil Appeal No. 5 of 1932.)

Bankruptcy Enactment, 1912, Section 33 (i) (a)—Meaning of "injury to person"—Sanction of Official Assignee.

The words "injury to person" in Section 33 (i) (a) of the Bankruptcy Enactment 1912, mean any injury which the bankrupt suffers in mind or body, which might give rise to an action for damages, and which cause of, or chose in action, or right to sue remained in the bankrupt after bankruptcy.

The Official Assignee, by his sanction, only intimates his consent to the bankrupt's bringing or continuing an action. By his sanction he cannot divest himself of the property, either real or personal, which is vested in him by the receiving order or under an order of adjudication, and revest that property in the bankrupt for the purpose of bringing an action.

B. J. P. Joaquim for the Appellant.

H. Hopson Walker and the *Hon. Mr. S. Veerasamy* for First Respondent.

R. S. Jervoise, Official Assignee, in person.